Supreme Court, U.S.
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No. 94-712

IN THE

Supreme Court of the United States

October Term, 1994

JOHN FRESSIE,

Petitioner,

v.

TRANS WORLD AIRLINES, DIANA MAGADAN, Individually,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

JOHN D. CLEMEN
Counsel of Record

SHANLEY & FISHER, P.C.
131 Madison Avenue
Morristown, New Jersey 07962-1979
(201) 285-1000
Attorneys for Respondents

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COUNTERSTATEMENT OF THE CASE

Respondent Trans World Airlines ("TWA") accepts petitioner's Question Presented for Review, List of Parties, and Statutory Provisions for purposes of the Brief in Opposition.[1]

TWA accepts the Statement of the Case as provided by petitioner, except that TWA denies that it arrested and prosecuted petitioner. Rather, the Port Authority police issued a summons to petitioner charging violation of the New York Penal Code as a disorderly person engaged in tumultuous behavior. TWA employee, Diana Magadan, signed the Complaint Information as a witness. (P.A. B-5).[2] The criminal complaint was subsequently dismissed by the court due to the State of New York's repeated requests for adjournments, despite Ms. Magadan's appearance in court to testify. (R.A. A1 to A4).

In addition, petitioner has failed to include the undisputed facts from which petitioner's claims arose. This factual background, in a light most favorable to petitioner, is provided in the decision of the United States District Court for the District of New Jersey, attached as Appendix B to petitioner's Petition for Writ of Certiorari. A summary of the facts demonstrates that petitioner's claims arose out of TWA's ticketing, boarding and seating services, claims which all courts agree are preempted.

Petitioner attempted to cash in a frequent flyer bonus certificate for a first class seat on TWA's October 15, 1988 Flight 800 from John F. Kennedy Airport in New York, New York to Charles DeGaulle Airport in Paris, France. (P.A. B-2 to B-4). No frequent flyer first class seats were available. (P.A. B-2 to B-4). In order to circumvent the non-availability of a frequent flyer first class seat assignment, prior to the date of flight, petitioner, after creating a scene at Chicago's O'Hare Airport, reserved a full fare

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[1] Pursuant to R. 29.1 Respondent Trans World Airlines has no parent corporations or subsidiary corporations.

[2] References to Petitioner's Appendix will be cited as "P.A. ___." References to Respondent's Appendix, attached, will be cited as "R.A. ___."

first class seat and obtained a boarding pass. (P.A. B-4). Petitioner did not, however, pay the full fare and his reservation was automatically canceled at the expiration of the time for payment.

On October 15, 1988, petitioner boarded Flight 800 and occupied a seat in the first class section of the aircraft. (P.A. B-4). A dispute arose with respect to the validity of petitioner's first class seat assignment, and TWA requested that he move to the Ambassador Class section of the aircraft. (P.A. B-4 to B-5). Petitioner repeatedly refused to change his seat. (P.A. B-4 to B-5). He created a disturbance and subsequently left the aircraft, escorted by the Port Authority police. (P.A. B-5).

After having refused to accept a seat in the Ambassador Class section, TWA offered to obtain for petitioner a seat on Pakistani Airlines for later that night. (P.A. B-5). Petitioner, however, was not interested, and he ultimately departed for France on TWA Flight 800 on the following day. (P.A. B-5)

Accordingly, this entire case arises out of petitioner's fraudulent attempt to circumvent TWA's frequent flyer system and his belligerent refusal to accept a seat assignment in the Ambassador Class section of the aircraft in accordance with TWA's ticketing, boarding and seating practices.

SUMMARY OF ARGUMENT

Review on Writ of Certiorari is not a matter of right, but of judicial discretion. *Sup. Ct. R.* 10. In this matter, petitioner contends that his Petition should be granted because of conflicts among the courts concerning the meaning of provisions of federal law, specifically the preemption provision of the Federal Aviation Act, 49 *U.S.C.A.* § 1305. However, a review of the case law cited by petitioner reveals that there is no conflict with respect to the application of § 1305 to petitioner's claims which arose out of TWA's ticketing, boarding and seating services. Indeed, as

demonstrated herein, all courts agree that a passenger's claims arising out of these services, including the removal of a belligerent passenger, are preempted.

ARGUMENT

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT PROPERLY AFFIRMED SUMMARY JUDGMENT IN CONFORMITY WITH THE APPLICABLE DECISIONS OF THIS COURT AND OTHER CIRCUIT AND STATE COURTS AND THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

Prior to this Court's decision in *Morales v. Trans World Airlines, Inc.*, 504 U.S. _____, 112 S. Ct. 2031, 119 L. Ed. 2d 157 (1992), the courts held that a passenger's state law claims arising out of an air carrier's decision to exclude the passenger from the aircraft due to a question with respect to the validity of the passenger's ticket, the passenger's belligerent behavior or the passenger's refusal to comply with the carrier's seating policy are preempted by § 1305. *See, e.g., O'Carroll v. American Airlines, Inc.*, 863 F.2d 11 (5th Cir. 1989), *cert. denied*, 490 U.S. 1106 (1989) (Section 1305(a)(1) expressly preempts state common law claims by a passenger who was excluded from a flight after creating a disturbance on aircraft); *Anderson v. U.S. Air, Inc.*, 818 F.2d 49 (D.C. Cir. 1987) (Section 1305(a)(1) preempts state law claims by a blind passenger who was excluded from flight, arrested and detained after refusing to move from his assigned seat which was near an emergency exit); *Von Anhalt v. Delta Air Lines, Inc.*, 735 F. Supp. 1030 (S.D. Fla. 1990) (Section 1305(a)(1) preempts state common law tort claims by a passenger who was excluded from flight after refusing to stow away her carry-on baggage); *Hastalis v. State of Illinois Human Rights Commission*, 562 N.E.2d 1272 (Ill. App. Ct. 1990), *appeal denied*, 567 N.E.2d 332 (Ill. 1991) (Section 1305(a)(1) preempts blind passenger's discrimination claim under the Illinois Human Rights Act for refusing to allow the passenger to board after he

refused to fill out a passenger assistance form). Indeed, in *Gay v. Carlson*, 1991 WL 190584 *2 (S.D.N.Y. Sept. 17, 1991), the Southern District of New York noted:

> An airline is in the business of providing air service to passengers. The issues of to whom to provide that service, and whom to exclude from a flight, clearly are issues relating to services of an air carrier. 49 *U.S.C.A. App.* 1305(a). A state law remedy for a passenger who felt wrongly excluded from a particular flight would contravene the express intent of congress to ensure that such decisions are governed by federal standards.

In *Morales v. Trans World Airlines, Inc.*, this Court reiterated that § 1305 expressly preempts state actions "having a connection with or reference to airline 'rates, routes, or services.'" 504 U.S. _____, 112 S. Ct. 2031, 119 L. Ed. 2d 157, 167-68 (1992). Although the Court recognized that some state actions may be "too tenuous[ly]" related to rates, routes or services to be preempted, 119 L. Ed. 2d at 172, it did not even suggest that claims arising out of ticketing, boarding and seating services are not sufficiently related. Indeed, following *Morales*, the courts continued to hold preempted passengers' claims arising out of the carrier's decision to exclude the passenger from the aircraft due to questions with respect to the validity of the passenger's ticket, boarding pass or seat assignment, the passenger's belligerent behavior or the passenger's refusal to comply with the carrier's seating policy.

In *Cannava v. U.S. Air, Inc.*, Av. Lit. Rep. (Andrews) 18020 (D. Mass. Jan. 7, 1993), the plaintiff brought state law tort claims after the air carrier allegedly refused to honor his airline tickets, treated him rudely and threatened to call airport security. The plaintiff was required to purchase new tickets for the same flight. The plaintiff in *Cannava*, as the petitioner in the within matter, also claimed that his new tickets were for first class seating, however, when he boarded the aircraft he was informed that his tickets were for coach seating. He was required to sit in coach and unable to sit together with his family. The United States District Court for the District of Massachusetts initially denied

defendant's motion to dismiss based upon preemption. However, after *Morales*, the *Cannava* court reconsidered and granted defendant's motion.

In *Lawal v. British Airways, PLC*, 812 F. Supp. 713 (S.D. Tex. 1992), the plaintiff brought state law tort claims after he was allegedly detained and assaulted by defendant's security personnel who claimed that plaintiff was using a stolen ticket. The United States District Court for the Southern District of Texas, relying on *Morales*, held plaintiff's claims preempted by § 1305 (a)(1).

In *Williams v. Express Airlines I, Inc.*, 825 F. Supp. 831 (W.D. Tenn. 1993), *reconsidering*, Av. Lit. Rep. (Andrews) 13153 (W.D. Tenn. Jan. 2, 1991), the plaintiff brought state law tort claims after he was denied boarding as a result of the carrier's policy of prohibiting wheelchair users from flying on its aircraft. The United States District Court for the Western District of Tennessee held that a plaintiff's breach of contract and negligence claims related to the services of the air carrier and were expressly preempted by § 1305. Av. Lit. Rep. (Andrews) 13153. With respect to plaintiff's claim of false imprisonment, however, the court initially held that intentional tort claims were not preempted. *Id.* at 13156, n. 3. With this Court's decision in *Morales*, however, the Western District of Tennessee reconsidered the question and concluded that plaintiff's false imprisonment claim was clearly preempted. 825 F. Supp. 831.

In *Seligman v. Northwest Airlines, Inc.*, Av. Lit. Rep. (Andrews) 19706 (N.D. Cal. Jan. 27, 1994), the plaintiffs filed an action alleging discrimination based on disability, which included numerous state law claims. The plaintiffs, a married couple who each had Tourette's Syndrome -- a genetic disability with various symptoms, including involuntary physical movements and vocalizations, which may include grunts, barks, high pitched sounds and use of obscene language or profanities -- were initially denied boarding. They were ultimately permitted to board the aircraft, but were treated poorly because of their disability. The United States District Court for the Northern District of California held their state law claims preempted, concluding that

accommodation of handicapped passengers and the plaintiffs' state law claims for improper treatment during boarding and flight are related to airline services. The court distinguished the case from products liability cases and personal injury/wrongful death actions arising out of unsafe conditions on aircraft. *Id.* at 19710.

This is a distinction petitioner fails to recognize when he suggests that the case law is conflicting. Some courts have held that a passenger's personal injury claims arising out of unsafe conditions are not preempted. However, these same courts have recognized preemption of claims arising out of ticketing, boarding and seating services and the exclusion of belligerent passengers. For example, in *Butcher v. City of Houston*, 813 F. Supp. 515 (S.D. Tex. 1993), relied upon by petitioner, the plaintiff's personal injury claim arising out of an airport slip and fall was not preempted, however, the United States District Court for the Southern District of Texas recognized and distinguished, as preempted, claims, such as this petitioner's claim, which relate to the alleged denial or inadequate provision of services such as ticketing, boarding or seating practices. 813 F. Supp. at 517. Indeed, the Southern District of Texas cited with approval *O'Carroll*, *Anderson* and *Von Anhalt*, recognizing that claims involving "ticketing, boarding, seating, in-flight service, and the like," are preempted. *Id.* The court also stated that "the exclusion of a belligerent passenger from an airplane [is] therefore [one of the] established examples of the kinds of activities that do relate to . . . 'services'". *Id.*

In *Hodges v. Delta Airlines, Inc.*, 4 F.3d 350 (5th Cir. 1993), *reh'g en banc granted*, 12 F.3d 426 (5th Cir. 1994), also cited by petitioner, where the plaintiff claimed she was injured when a box fell from the overhead compartment, the Fifth Circuit reluctantly found preemption based upon binding precedent – *Baugh v. Trans World Airlines, Inc.*, No. 87-2611 (S.D. Tex. Oct. 26, 1989) (memorandum and order), *aff'd per curiam*, 915 F.2d 693 (5th Cir. 1990) (personal injury claim arising out of flight attendant's stomping on plaintiff's foot preempted) – but expressed disagreement with the cited authority. The Fifth Circuit, however, made clear that claims arising out of ticketing, boarding or seating

practices are and should be preempted. 4 F.3d at 356. Indeed, the Fifth Circuit concluded:

> In *O'Carroll*, we did not discuss the scope of section 1305 because the state law claims arising from the alleged wrongful exclusion undeniably related to the services provided by the airline. Enforcement of *O'Carroll's* state law claims would result in significant *de facto* regulation of the airlines' boarding practices and, moreover, would interfere with the implementation of federal regulations granting the airlines substantial discretion in this matter.

Id.

Petitioner in this case simply fails to recognize that his claim is distinguishable from the claims in *Butcher* and *Hodges*, and more akin to the claims in *O'Carroll*, *Anderson*, *Von Anhalt*, *Cannava*, *Lawal*, *Williams* and *Seligman*, all of which were preempted. Petitioner did not suffer a personal injury as a result of an unsafe condition on the aircraft or at the airport. His alleged damages arise out of the carrier's alleged inadequate provision of ticketing, seating and boarding services and the carrier's exclusion of a belligerent passenger.

Contrary to petitioner's arguments, preemption of claims arising out of ticketing, boarding and seating practices is the one matter on which all courts agree. Indeed, in *Fenn v. American Airlines*, 839 F. Supp. 1218 (S.D. Miss. 1993), cited by petitioner, the United States District Court for the Southern District of Mississippi, although holding preempted the plaintiff's state law claims arising out of the carrier's post-landing treatment of the plaintiff after a fellow passenger accused the plaintiff of criminal conduct, approved of the language in *Hodges*, which recognized that preempted services include items such as ticketing and boarding procedures. 839 F. Supp. 1222-23.

The same is true of the court in *Bayne v. Adventure Tours USA, Inc.*, 1994 WL 9531 (N.D. Tex. Jan. 13, 1994). Contrary

to petitioner's assertions, *Bayne* had nothing to do with ticketing, boarding or seating. The plaintiff claimed that the carrier ignored the plaintiff's complaints about a disruptive passenger and made misrepresentations to the police which caused the plaintiff to be taken into custody, detained and subjected to a luggage search. While the United States District Court for the Northern District of Texas held that the plaintiff's claims were not preempted, it too approved the *Hodges* language recognizing preemption of claims arising out of ticketing and boarding practices. 1994 WL 9531, *1.

In *Doricent v. American Airlines*, 1993 WL 437670 (D. Mass. Oct. 19, 1993), a flight attendant shouted racial epithets at a passenger while he was boarding and stowing away his carry-on baggage. The United States District Court for the District of Massachusetts held that the plaintiff's claims were not preempted. "Racial discrimination . . . [has] nothing whatsoever to do with . . . airline service." 1993 WL 437670, *5. Plaintiff's claims did not relate "to boarding and seating passengers on airline flights." 1993 WL 437670, *6. However, the court recognized that claims are preempted when they have "a 'significant impact' in economic terms over an airline's ability to administer its rates, routes, or services." 1993 WL 437670, *6. This is precisely the matter before this Court. Petitioner attempted to circumvent the frequent flyer system by paying a frequent flyer fare for a first class seat when no frequent flyer first class seats were available. Petitioner then improperly obtained an invalid boarding pass. It is difficult to imagine a claim with a more significant economic impact upon the carrier's ticketing, boarding and seating services and a claimant less deserving of this Court's indulgence.[3]

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[3] TWA maintains that the *Doricent* court's suggestion that only laws having a significant economic impact on a carrier's services are subject to preemption is erroneous. The history of the Federal Aviation Act reveals that Congress was concerned with the quality of service as well as economic stability. *Diefenthal v. Civil Aeronautics Board*, 681 F.2d 1039, 1045-46 (5th Cir. 1982), *cert. denied*, 459 U.S. 1107 (1983). *Morales* involved airline *rates*, and for that very reason, must have been

(continued...)

In a desperate attempt to show conflict, petitioner cites two New Jersey Appellate Division opinions – *Miller v. Northwest Airlines, Inc.*, 602 A.2d 785 (N.J. App. Div. 1992), and *Vail v. Pan Am Corp.*, 616 A.2d 523 (N.J. App. Div. 1992). *Miller* was a pre-*Morales* decision, which relied, *inter alia*, on the savings clause contained in the Federal Aviation Act. This Court in *Morales* rejected reliance on the savings clause, noting, "A general 'remedies' saving clause cannot be allowed to supersede the specific substantive pre-emption provision . . ." 119 L. Ed. 2d at 168. The savings clause was considered as nothing more than a "relic of the pre-ADA/no pre-emption regime." *Id.* Most significant, however, is the fact that in *Vail*, the New Jersey Appellate Division recognized that "*Morales* casts serious doubt on the holding in *Miller*." 616 A.2d at 527. Accordingly, *Miller* is simply bad law and has no bearing on the within matter.

In fact, the New Jersey Law Division, relying on *Morales* and *Vail*, held that a passenger's claim arising out of the carrier's alleged failure to honor a confirmed reservation "beyond a shadow of a doubt 'relates to' airline services". *El Menshawy v. Egypt Air*, 647 A.2d 491, 492 (N.J. Law Div. 1994). The New Jersey Court recognized that "the issue would hardly be debatable if not for *West v. Northwest Airlines, Inc.*, 995 F.2d 148 (9th Cir. 1993)", a case which the court discounted as "a stunning indifference to *Morales*." 647 A.2d at 492.

Similarly, *West v. Northwest Airlines, Inc.*, 995 F.2d 148 (9th Cir. 1993), *cert. denied*, 114 S.Ct. 1053, which is poorly reasoned and consistently rejected by other courts, is the only case which arguably supports this petitioner's position that there is a direct

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[3](...continued)
evaluated in terms of economic impact. Notwithstanding, TWA maintains that petitioner's claims do have a significant economic impact and are preempted under either analysis.

conflict among existing case law.[4] In *West*, after a remand in light of *Morales*, the Ninth Circuit concluded that plaintiff's compensatory damage claims arising out of his denied boarding on an overbooked flight were not preempted. The court concluded that the plaintiff's claims were too tenuously connected to airline rates, routes or services. 995 F.2d at 151. It is difficult to follow the Ninth Circuit's rationale as applied to a case involving overbooking. It is noted, however, that the Ninth Circuit relied, in part, on an FAA regulation, 14 C.F.R. § 250.9 (1990), which allows, as an alternative, a passenger who is bumped from an overbooked flight to seek damages in the courts. 995 F.2d at 151-52. TWA maintains, and the *West* dissent agrees, *id.* at 152-54, that the FAA regulation is preempted by § 1305. However, the court's reliance on § 250.9 is a better rationale than the court's disingenuous suggestion that a claim arising out of overbooking is too tenuously connected to rates and services. Indeed, the United States District Court for the Northern District of California has concluded that *West* merely "instructs that state-law claims which

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[4] On page 15 and 16 of petitioner's brief, petitioner relies on *Wolens v. American Airlines, Inc.*, 626 N.E.2d 205 (Ill. 1993), *cert. granted*, 62 U.S.L.W. 3556 (U.S. Apr. 4, 1994), for the proposition that a breach of contract claim is not preempted by the statute. The plaintiffs in *Wolens* sought damages for breach of contract and for violation of the Consumer Fraud Act based upon the defendant's retroactive modification of its frequent flyer program. The court held that frequent flyer programs are not "essential element[s]" of airline operations. 626 N.E.2d at 208. Of course, frequent flyer programs encompass much more than airline fares. They include hotel and other awards. *Wolens* did not involve, as this case does, the air carrier's ticketing, boarding and seating services, all of which are clearly essential elements of airline operations. Indeed, the Appellate Court of Illinois, itself, distinguished *Wolens* and held preempted an airline employee's tort claims based upon the airline's failure to seat the employee's daughter on an international flight. *Pearson v. Lake Forest Country Day School*, 633 N.E.2d 1315 (Ill. App. Ct. 1994). The court held that "boarding and seating practices are not peripheral to the operation of an airline" as are frequent flyer programs. *Pearson*, 633 N.E.2d at 1320. Also significant is that petitioner fails to note that this Court has once again granted review of the Illinois court's decision in *Wolens*. 62 U.S.L.W. 3556.

are explicitly recognized by controlling federal agency regulations are still viable." *Federal Express Corp. v. California Public Utilities Commission*, 1993 WL 399380 at *5-6 (N.D. Cal. Sept. 23, 1993). *See also Pearson v. Lake Forest Country Day School*, 633 N.E.2d 1315 (Ill. App. Ct. 1994) (distinguishing *West* and holding § 250.9 inapplicable where passenger did not hold a confirmed reservation and was not bumped from the flight as a result of overselling). In the within matter, there are no federally-recognized state law claims.

West is poorly reasoned and inconsistent with *Morales* and post-*Morales* decisions. Of *West*, the Fifth Circuit noted: "Under either *Morales* or the analysis we would prefer, it is difficult to see how a lawsuit for overbooking would not 'relate to' airline 'services.'" *Hodges*, 4 F.3d at 356. *See also Doricent*, 1993 WL 437670, *6 (recognizing that claims arising out of overbooking so "significantly affect an airline's ability to perform its 'services'" so as to be preempted); *El Menshawy v. Egypt Air*, 647 A.2d 491, 492 (N.J. Law Div. 1994) (*West* majority's suggestion that passenger's claim was too tenuous or remote to airline services or even a borderline question "constitutes a stunning indifference to *Morales*").

The irrational analysis of *West* which has been consistently rejected by other courts, demonstrates that there is, indeed, no conflict on the issue of preemption as it relates to claims arising out of ticketing, boarding and seating services, as does this petitioner's claims. Indeed, it appears that the courts all agree that this petitioner's claims are and should be preempted.

This case involves a passenger disgruntled by the carrier's ticketing, boarding and seating practices. Petitioner's belligerent behavior resulted in his exclusion from the flight. It is difficult to imagine claims more related to an air carrier's services. Accordingly, the Petition for Writ of Certiorari should be denied.

CONCLUSION

It is clear that there are no conflicting decisions as to whether claims, such as this petitioner's claims, which arise out of ticketing, boarding and seating services are preempted. Indeed, this is one issue on which the courts seem to agree.

For the foregoing reasons, it is respectfully requested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

SHANLEY & FISHER, P.C.
Attorneys for Respondent
Trans World Airlines, Inc.

By:_____
John D. Clemen

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL ACTION NO. 89-1910(MTB)

JOHN FRESSIE,	:	DEPOSITION UPON ORAL EXAMINATION OF DIANA J. MAGADAN
Plaintiff,	:	
v.	:	
TRANS WORLD AIRLINES and DIANA MAGADAN, Individually,	:	
Defendant.	:	

T R A N S C R I P T of the stenographic notes of the proceedings in the above-entitled matter, as taken by and before FREDERICK L. GOLDBERG, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, at the offices of Shanley & Fisher, Esqs., 131 Madison Avenue, Morristown, New Jersey on Thursday, January 18, 1990, commencing 10:15 a.m.

***crew spoke to him.

Q. Did he ever leave the cockpit?

A. Not to my knowledge.

Q. After the disorderly summons and complaint was signed, which I believe occurred on the evening of October 15th, were you ever contacted by either representative of TWA or anyone else, either from the DA's office, as to whether or not you wanted to pursue the matter?

MR. SHAPIRO: During what period of time?

MR. FRICKE: After October 15, 1988 and prior to February 2, 1989.

MR. SHAPIRO: Okay.

A. No.

Q. On February 2, 1989, were you in the Queens criminal court prepared to testify in behalf of TWA and for the people of New York?

A. Yes.

Q. Did you testify?

A. No.

Q. What is your understanding as to what happened on that date?

A. My understanding as what happened on that date was that there had been two prior court appearances or dates that I was totally unaware of and that on this date the DA was supposed to be prepared to provide a case. And since I

was the only person there, I could not testify to any hearsay and, therefore, she was not prepared to go to trial and it was dismissed because Mr. Fressie could not have a speedy trial.

Q. That was your understanding?

A. My laymen's understanding of it, yes.

Q. You do know, in fact, that the matter was dismissed?

A. Yes.

Q. Okay.

Have you -- prior to this occasion in your employ for TWA -- ever sworn out a criminal complaint against a passenger?

A. No.

MR. SHAPIRO: Occasion being October 15th or February 2?

MR. FRICKE: The only time that one was sworn out was on October 15th.

MR. SHAPIRO: Okay.
May not necessarily refer to that antecedent date.

MR. FRICKE: All right.

A. (Continuing) I really don't recall, but I don't believe so.

CERTIFICATE

I, FREDERICK L. GOLDBERG, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings in the above-entitled matter as reported by me stenographically on the date and at the time and place hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither of counsel nor attorney for any party in this action, and that I am neither a relative nor employee of such counsel or attorney, and that I am not financially interested in the action.

FREDERICK L. GOLDBERG, C.S.R.
Certificate No. XI00274
Notary Public of the State of New Jersey
My Commission Expires May 19, 1992

DATED: February 9, 1990